

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHARLES STRAIN,

Plaintiff,

No. CIV S-05-0474 GEB GGH P

vs.

CHIEF MEDICAL OFFICER  
R. SANDHAM, et al.,

FINDINGS AND RECOMMENDATIONS

Defendants.

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Plaintiff, proceeding pro se and in forma pauperis, seeks relief pursuant to 42 U.S.C. § 1983. By Order, filed October 12, 2005, the court determined that plaintiff's complaint stated a cognizable claim for relief against several defendants, including defendant P. Mangis, and ordered plaintiff to provide information for service of process upon defendants on forms USM-285, a completed summons, sufficient copies of the complaint for service, and a notice of compliance. On January 6, 2006, the court ordered the U.S. Marshal to serve process upon, inter alia, defendant Mangis. When process directed to defendant Mangis was returned unserved because his current address was unknown, the court, by Orders, filed on April 7, 2006, and June 5, 2006, granted plaintiff extensions of time to submit the documents needed for service of defendant P. Mangis. In the Order, filed on June 5, 2006, defendants' counsel were directed to

1 query the California Department of Corrections and Rehabilitation (CDCR) to ascertain the  
2 whereabouts of defendant Mangis. By a response filed on June 9, 2006, defendant Mahakian  
3 indicated, after a diligent search and reasonable inquiry, that no information as to defendant  
4 Mangis' whereabouts could be found. By a response filed on June 15, 2006, counsel for  
5 defendants Masterson, James, Roche, Rolfing, and Sandham submitted a declaration stating that  
6 his inquiries to the CDCR had not revealed any other addresses for defendant Mangis than one in  
7 Sparks, Nevada, to which the USM-285 and summons had evidently been forwarded and from  
8 which the USM-285 form had been returned unexecuted. Plaintiff provided an address in New  
9 Harmony, Utah by filing dated July 3, 2006. The court once again directed service of process  
10 upon defendant Mangis by Order, filed on March 20, 2007, this time of the amended complaint,  
11 filed on June 2, 2006, upon which this action proceeds, at the address most recently provided.  
12 However, the summons has again been returned unexecuted by filing, dated May 30, 2007,  
13 stating it was "returned from post office" because the addressee had "moved, left no address."

14 Fed. R. Civ. P. 4(m) states, in relevant part: "[i]f service of the summons and  
15 complaint is not made upon a defendant within 120 days after the filing of the complaint, the  
16 court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action  
17 without prejudice as to that defendant or direct that service be effected within a specified time...."  
18 The court has been generous in granting extensions of time to effect service of this party and has  
19 invoked the aid of defendants' counsel who have represented that they have made good faith, but  
20 unsuccessful, efforts to locate P. Mangis. As neither plaintiff nor counsel for defendants have  
21 been able to locate this party and the court has twice issued orders directing service of process,  
22 and since service has been unsuccessfully attempted upon P. Mangis at three separate locations  
23 (the first summons having been forwarded), the court will, at this time, recommend that  
24 defendant P. Mangis be dismissed, pursuant to Fed. R. Civ. P. 4(m).

25 Accordingly, IT IS RECOMMENDED that defendant P. Mangis be dismissed  
26 from this action pursuant to Fed. R. Civ. P. 4(m).

1           These findings and recommendations are submitted to the United States District  
2 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty  
3 days after being served with these findings and recommendations, any party may file written  
4 objections with the court and serve a copy on all parties. Such a document should be captioned  
5 “Objections to Magistrate Judge's Findings and Recommendations.” Any reply to the objections  
6 shall be served and filed within ten days after service of the objections. The parties are advised  
7 that failure to file objections within the specified time may waive the right to appeal the District  
8 Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

9 DATED: 6/29/07

/s/ Gregory G. Hollows

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GREGORY G. HOLLOWS  
UNITED STATES MAGISTRATE JUDGE

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